

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTYN KUCERA,

Defendant.

8:13-CR-249

ORDER

This matter is before the Court on correspondence from the defendant that the Court has construed as a motion to reconsider ([filing 256](#)) the Court's previous order ([filing 255](#)) regarding the construction of his post-judgment motion ([filing 254](#)). The Court will not reconsider its previous order.

The defendant's letter poses three questions, the first two of which seem to concern the Court's observation that [Fed. R. Civ. P. 60\(b\)](#) is not the proper vehicle to challenge his criminal conviction. *See filing 255 at 1; filing 256 at 1.* The reason one civil remedy is available while another is not is simple: the Federal Rules of Civil Procedure apply in civil proceedings, *see Fed. R. Civ. P. 1*, so [Fed. R. Civ. P. 60\(b\)](#) only provides relief from a civil judgment, but [28 U.S.C. § 2255](#) expressly permits a court to vacate, set aside, or correct the criminal sentence of a prisoner in custody, *see § 2255(a)*. If the defendant believes that conclusion is incorrect, he is free to make his argument to a higher court after the Court rules on his motion ([filing 254](#)).

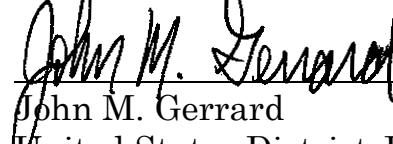
The third question posed by the defendant is one the Court can't answer, because it essentially asks the Court to rule on the merits of his previous motion ([filing 254](#)). The Court will eventually rule on that motion, but cannot do so until the defendant clarifies how that motion should be construed and

whether it will be supplemented or amended. *See filing 255.* The deadlines set by the Court's previous order ([filing 255](#)) stand.

IT IS ORDERED that the defendant's motion to reconsider ([filing 256](#)) is denied.

Dated this 3rd day of August, 2021.

BY THE COURT:



John M. Gerrard

United States District Judge